IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/01/2003

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1292 of 2002

S.K. Muthusamy ... Petitioner

-Vs-

Tamil Nadu Industrial Investment
Corporation,
rep. by its Branch Manager
Namakkal
Namakkal District ... Respondent

Revision under Section 115 CPC against the order dated 14-03-2002 made in I.A. No. 51 of 2001 in I.P. No. 2 of 1999 on the file of Subordinate Judge, Sankari.

!For Petitioner : Mr. V. Srinivasan

^For Respondent : Mr. J.L. Dolia

:ORDER

This revision is filed against the order of dismissal dated 14-03-20 02 made in I.A. No. 51 of 2001 in I.P. No. 2 of 1999 on the file of Sub Judge, Sankari filed by the petitioner herein seeking for a direction to direct the respondent herein to deposit the surplus amount with accrued interest into the Court within the stipulated time.

2. The debtors, who borrowed loan with the respondent herein have filed I.P. No. 2 of 1999 to adjudicate them as insolvents, wherein the petitioner herein has been arrayed as 7th respondent and the respondent is the 297th respondent. The respondent herein has sanctioned term loan of Rs.20 lakhs on 11-01-1996 to M/s. S.K. Borewell services, a partnership concern represented by Kaliannan, Sankar, Gopal and Saravanan. The said persons committed default in paying the loan amount. The respondent herein has taken possession of the hypothecated property of the said persons under Section 29 of The State Financial Corporation Act, 1951. Ultimately, the properties were brought into auction sale on 08-09-1999. The petitioner herein has filed I.A. No. 41 of 1999 to stop the auction. Based on the undertaking given by the respondent to deposit the surplus sale proceeds into the Court, the said application was dismissed. Admittedly surplus amount of Rs.13 lakhs was in

the hands of the respondent. According to the petitioner, the respondent ought to have deposited the surplus amount into the court as per the undertaking, but failed to do so, with the result, I.A. No. 51 of 2001 in I.P. No. 2 of 1999 was filed praying the court below to direct the respondent to deposit the surplus amount with accrued interest. The said application was dismissed by the court below in respect of interest portion alone on 14-03-2002, however the respondent has deposited the surplus amount of Rs.13 lakhs on 22-03-2002. The present revision has been filed challenging the said order passed by the court below.

3. The point for consideration in this revision is whether the respondent is liable to pay interest on the surplus amount or not?

4. Mr. V. Srinivasan, learned counsel appearing for the petitioner submitted that on the undertaking given by the respondent in I.A. No. 41 of 1999, the trial court has dismissed the stay application, but contrary to the said undertaking the respondent failed to deposit the said amount soon after the auction sale on 08-09-1999 as such the respondent is liable to pay interest on the said amount from the said date till the date of deposit into the Court; that the court below erred in dismissing the application exempting the respondent from paying the interest on the amount of Rs.13 lakhs, which is untenable in law; that the trial court misconstrued the decision of the Honourable Supreme Court reported in AIR 2001 SC 5 and prayed for setting aside the impugned order.

5. Mr. Dolia, learned counsel appearing for the respondent submitted that the respondent is sponsored by the State of Tamil Nadu and established with the object of extending financial assistance to various entrepreneurs and for development of industries in the State; that the Central Government, by its notification issued from time to time under Section 46 of the State Financial Corporation Act, 1951 has made certain provisions in the Act namely Sections 29, 30, 31 and 32 applicable to the Corporation for the purposes of speedy recovery of dues to the Corporation. By virtue of the power conferred under Section 2 9 of the said Act, the hypothecated property and collateral security were sold in auction sale; that after adjusting the balance loan arears, the surplus amount of Rs.13 lakhs was in their hands; that I.A. No. 51 of 2001 was rightly dismissed by the trial court in respect of payment of interest is concerned as the Corporation has no statutory obligation to pay interest on the excess amount; that there is no privity of contract between the petitioner and respondent herein; that the respondent is not a profit making organisation as such not liable to pay interest and prayed for dismissal of the revision.

6. The learned counsel appearing for the respondent relied on the decision of the Supreme Court reported in AIR 2001 SC – 5 (Himachal Pradesh State Financial Corporation, Shimla Vs. Prem Nath Nanda and others) wherein in Para-8 it has been held thus:-

"8. From the record it appears that after getting a loan in the year 1983 and 1986 the respondents committed persistent defaults in repayment which necessiated the action against them under Section 29 of the Act in the

year 1991. As no amount was paid till 13th April 1993, the Corporation sold the industrial unit, a hotel, for an amount of Rs.39.75 lacs. Before the excess outstanding amount could be paid to the respondents, they filed a writ petition in the High Court challenging the action of the Corporation and thus preventing it from making the payment. The counsel for the respondents even made an offer that there was a buyer to purchase the hotel for a sum of Rs.60 lacs. The negotiations with the prospective buyer could not mature on account of application filed by the earlier purchaser. The High Court instead of deciding the application of the earlier purchaser disposed of the writ petition vide the order impugned. As noticed earlier, the High Court has not assigned any reason much less a cogent one for the payment of interest. In the absence of an agreement and the statutory provision, interest could not be claimed by the respondents as a right. The Court did not refer to any circumstance on the basis of which the interest could have been granted as an equitable relief.

7. Section 29 of the State Financial Corporation Act, 1951 contemplates rights of financial corporation in case of default by any industrial concern in repayment of loan or advance or any instalments thereof etc., the financial corporation shall have the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged or hypothecated to the financial corporation. Sub-section (4) of Section 29 speaks that where any action has been taken against industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the financial corporation have been properly incurred by it shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary be held by it in trust to be applied firstly, in payment of such cost, charges and expenses and secondly in discharge of the debt due to the financial corporation and the residue of the money so received shall be paid to the person entitled thereto.

8. On a careful reading of the entire section 29, particularly subsections 1 and 4, one can understand that rights of financial corporation to take over the management of the industrial concerns or realise the mortgage money by way of lease or sale is vested with it under Section 29 and the money which is received by it shall in the absence of any contract to contrary, be held by it in trust to be applied firstly in payment of such costs, charges and expenses and in discharge of the debt due to the financial corporation and the residue shall be paid to the person entitled to. Such rights also can be enforced by taking recourse to the ordinary law contained in the Transfer of Property Act and the Code of Civil Procedure.

9. Section 29 of the State Financial Corporation Act, 1951 is more or less equivalent to Section 69 of the Transfer of Property Act. Under Section 69, a mortgagee, or any person acting on his behalf, shall subject to the provisions of this section, have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage money, without the intervention of the Court. Under Sub-section (4) of Section 69, the money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not

made subject, or after payment into the Court under Section 57 of a sum to meet any prior encumbrance, shall, in the absence of contrary to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly in discharge of the mortgage money and cost and other money, if any, due under the mortgage; and residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof. The words "in trust to be applied by him" are not restricted to the cases referred to as firstly and secondly but also to the residue and such residue, therefore, bears the character of trust money in the hands of the mortgagee.

10. Under Section 34 of CPC, the Court is vested with the power to grant interest on equitable ground.

11. In this case, the petitioner herein has filed an application IA No. 41 of 1999 opposing the steps for auction sale initiated by the respondent on the ground that if auction was permitted, the sale consideration would be very low and in the interest of other creditors prayed for stay of the auction. The respondent has filed counter whereby he undertakes to deposit the surplus amount into the Court for disposal. In view of the said undertaking given by the respondent, the application was dismissed. The above facts are not disputed by the respondent herein. Contrary to the said undertaking, the respondent failed to deposit the amount. The respondent herein has advanced argument that there is no privity of contract between them and the petitioner, however the undertaking given by the respondent is not denied. The said undertaking amounts to concluded contract. Besides that, as contemplated under Section 29, it is the bounden duty of the respondent herein to keep the surplus money as trust money and to get it invested to improve the same. In other words, it shall not allow assets to remain outstanding on personal securities which yield no benefits. The respondent has not shown any evidence that they have taken steps to invest the same for better appreciation. No valid reason is assigned by the respondent for not depositing the surplus amount into the Court.

12. The judgment relied on by the learned counsel for the respondent reported in AIR 2001 SC – 5 is in no way useful to them. In the said judgment, the Honourable Supreme Court observed that the defaulter cannot claim interest on surplus amount. The Hon'ble Supreme Court, after going through the facts of the case found that the delay was caused by the defaulter from making payment by the financial corporation and no reason was assigned by the Hon'ble High Court in ordering payment of interest. It is also important to extract the relevant portions in Para-6 of the said judgment of the Apex Court. ".... However, in appropriate cases, interest may be awarded in lieu

of compensation or damages for allegedly and wrongfully retaining the amount payable to a party....." Indeed, I have gained strength from the said judgment to reach a conclusion.

13. In this case, the respondent herein has agreed to deposit the

amount but failed to do the same thereby wrongfully retained the amount, hence the respondent is liable to pay interest.

14. For the foregoing reasons, the impugned order passed by the trial court is liable to be set aside and accordingly set aside. Considering the fact that the respondent is State Financial Institution and the petitioner is claiming interest on behalf of all the other creditors, I direct the respondent/Corporation to pay interest at the rate of 9% per annum from the date of receipt of sale proceeds till the date of deposit into the Court to serve the ends of justice within two months from the date of receipt of the order.

With the above observation, the revision is allowed. No costs.

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Index : Yes
Internet : Yes
To
1. The Subordinate Judge
Sub-Court
Sankari

2. The Branch Manager
Tamil Nadu Industrial Investment
Corporation,
Namakkal.